



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

CONCORD FIRE OFFICERS ASSOCIATION,	:	
LOCAL 3195	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. F-0130:9
	:	
CITY OF CONCORD	:	DECISION NO. 92-109
	:	
Respondent	:	

---

APPEARANCES

Representing Concord Fire Officers Association, Local 3195:

Glenn R. Milner, Esq., Counsel

Representing City of Concord:

Paul Cavanaugh, Esq., Counsel

Also appearing:

Robert C. Petrin, Local 3195  
Ronald Lowd, Local 3195  
John M. Dionne, Concord Fire Dept.  
Raymond C. Thurston, Concord Fire Dept.  
Brian Braley, City of Concord  
Julia Griffin, City of Concord

BACKGROUND

The Concord Fire Officers Association, Local 3195 (Union) filed unfair labor practices charges against the City of Concord (City) on March 13, 1992, alleging unilateral change in past practice and in working conditions in violation of RSA 273-A:5 I (e), (g), (h) and (i). The City denied the commission of any unfair labor practices in its answer filed March 26, 1992. This matter was then set for hearing and heard by the Board on June 9, 1992.

The essential elements of the prohibited practice complaint allege that the parties operated under a collective bargaining agreement effective through February 28, 1992. Prior to the expiration of that agreement, the City determined to "deactivate" or "put out of service" Engine Company No. 1 as of 0700 hours on February 22, 1992. On February 18, 1992, the City issued a Department Directive announcing this change and a change in officer assignments. The Union alleges this directive assigns personnel in a manner contrary to past practice in the department. Also, on February 18, 1992, the City through the Fire Department, issued new administrative regulations (No. 107.11) relative to the hiring or filling of officer vacancies. The Union claims the new regulations are "material changes to the conditions of employment" and "have never been negotiated." The foregoing facts are not in dispute. As of the date of hearing, the Union was seeking to have this Board direct that the impact of the foregoing changes must be a topic of negotiations between the parties in up-coming mediation for a successor agreement.

The elimination of Engine 1 freed officers assigned to that duty and made them available for what were formerly assignments (Option A under Administrative Regulation 107.11). This changed the departmental practice from utilizing personnel on an overtime basis for the first officer vacancy to the second officer vacancy, i.e., it was no longer necessary to use personnel in an overtime capacity until two or more officer vacancies occurred. In both its answer and opening arguments, the City claims that there has been no change in working conditions, that there has been no change in the duties performed by unit personnel, that this case involves only an overtime issue (not an issue of a unilateral change in schedule) and that the change or modification in the utilization of personnel to fill vacancies is not a mandatory subject of bargaining.

#### FINDINGS OF FACT

1. The City of Concord is a public employer as defined by RSA 273-A:1 X and employs fire officers in its Fire Department.
2. The Concord Fire Officers Association, Local 3195, IAFF, is the duly certified bargaining agent of fire officers employed by the City.
3. RSA 273-A:1 XI confers to public employers "managerial policy within the exclusive prerogative of the public employer" which includes the public employer's right to determine its "organizational structure and

the selection, direction and number of its personnel, so as to continue public control of governmental functions." Filing of officer vacancies is thus a "managerial policy" and not a mandatory subject of bargaining on either a regular or overtime basis.

4. To the extent overtime utilization under the collective bargaining agreement (CBA) impacts the number of personnel who must be employed by the City at any given time, it is not bargainable.
5. Article XIV of the parties' CBA provides for assignment "in accordance with seniority by battalion" and for other than fire suppression, "shall be distributed on an equitable basis."
6. There is no evidence that the new method of assigning personnel to fill officer vacancies violated the provisions of the CBA relating thereto.

ORDER

The Board finds:

1. No commission of an unfair labor practice.
2. The charge of unfair labor practice is DISMISSED.

So ordered.

Signed this 18th day June, 1992.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Seymour Osman and E. Vincent Hall present and voting.